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5507-58 Linden Blvd. Brooklyn LLC v. San Pablo

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G
5507-58 LINDEN BLVD BROOKLYN LLC,

Petitioner,

Index No. L&T 74079/19

DECISION/ORDER

-against-

STEPHANIE SAN PABLO,

Respondent-Tenant.

Hon. Kevin C McClanahan

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Notice of Motion:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIRMATION & AFFIDAVIT ANNEXED	<u>1-3</u>
ANSWER AFFIRMATION	<u>10</u>
REPLYING AFFIRMATION	<u>13-14</u>
EXHIBITS	<u>4-9, 11-12, 15-19</u>

In this proceeding, respondent moves to dismiss the petition. Petitioner opposes the motion. The petition alleges that respondent violated a substantial obligation of her tenancy by installing security cameras outside of her apartment on the exterior wall of the building. After sending a letter, the notice of termination alleges that respondent failed to cure the violation.

Kennie Bleasdille swears that he installed the cameras in 2009 or 2010 with the knowledge of the prior owner/landlord. He swears that since 2015, the petitioner or its agent knew that he had "cameras overlooking the public street, because of its conspicuous position

outside of my window.” He installed the cameras after he was the victim of motor vehicle vandalism.

In its papers, petitioner does not provide an affidavit from anyone with personal knowledge of the facts. Thus, the facts are not in dispute. Petitioner simply cites to the Building Rules and the “no waiver” provision in the written lease. The photograph attached to the opposition papers establish that the cameras are open and notoriously affixed to the building.

Although a clear violation of the lease, the Court finds that petitioner waived the violation by its delay in seeking removal of the cameras. The prior owner failed to seek their removal at all. The current landlord/owner has owned the building since at least 2015 and did not commence this proceeding until August of 2019 despite the fact that the cameras are open and notoriously appended to the exterior wall. Petitioner has accepted rent since its constructive notice of the cameras and offered renewal leases. Notably in 2018, petitioner commenced a different holdover proceeding against the respondent while knowing of the existence of the cameras.

Waiver is “the intentional or voluntary relinquishment of a known right . . . whether conferred by law or by contract, with full knowledge of the material facts, [where one] does or forbears to do something . . . which is inconsistent with the right, or his intention to rely upon it.” *Black's Law Dictionary* 1092 [abridged 6th ed. 1991]. The general rule is that acceptance of rent with knowledge of conduct violative of the lease constitutes a waiver by the landlord of the default even if the lease contains a nonwaiver provision. See *Malloy v. Club Marakesh, Inc.*, 71

A.D.2d 614 (2d Dep't 1979).

Petitioner does not deny the facts which establish its knowing waiver of the lease right barring the installation of the cameras. Furthermore, petitioner does not assert or provide any evidence tending to establish that the cameras pose a danger to other tenants or pedestrians walking on the sidewalk or that they have damaged petitioner's property. See *Urban Horizons Tax Credit Fund v. Zarick*, 195 Misc2d 779 (Civ Ct Bronx Co 2003).

Based on the foregoing, the Court grants the motion and dismisses the petition with prejudice. The Court shall mail courtesy copies of its decision/order to counsel.

Dated: February 14, 2020
Brooklyn, New York

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Kevin McClanahan, J.H.C.